

AMENDED IN ASSEMBLY MAY 5, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 147

Introduced by Assembly Member Saldana
(Coauthors: Assembly Members Block, *Blumenfield*, Chesbro,
Huffman, Ma, and Nava)
(Coauthor: Senator Wiggins)

January 22, 2009

An act to amend Section 25214.10.1 of, and to add Section 25214.10.3 to, the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 147, as amended, Saldana. Hazardous waste: electronic waste.

(1) Existing law requires the Department of Toxic Substances Control to adopt regulations to prohibit an electronic device from being sold or offered for sale in this state if the electronic device is prohibited from being sold or offered for sale in the European Union on and after its date of manufacture, due to the presence of certain heavy metals. Existing law requires these regulations to take effect January 1, 2007, or on or after the date that the Directive 2002/95/EC, adopted by the European Parliament and the Council of the European Union on January 27, 2003 (Directive 2002/95/EC), takes effect, whichever date is later. Existing law defines the term “electronic device,” for purposes of those provisions, to have the same meaning, with reference to the Electronic Waste Recycling Act of 2003, as “covered electronic device” which is defined as a video display device that is identified by the department, pursuant to specified regulations, as a presumed hazardous waste when discarded.

A violation of the hazardous waste control laws, including a regulation adopted pursuant to those laws, is a crime.

This bill would require a manufacturer of an electronic device to prepare and, at the request of the department, submit to the department within 28 days of the date of the request, technical documentation or other information showing that the electronic device sold or offered for sale by that manufacturer is not prohibited from sale.

This bill would define the term “RoHS Directive” to mean that directive on the restriction of the use of certain hazardous substances in electrical and electronic equipment, cited as Directive 2002/95/EC, as amended on or before January 1, 2010. The bill would define the term “electronic equipment” to mean a device that is dependent on electric currents or electromagnetic fields to work properly or that is a device for the generation, transfer, or measurement of electric currents or fields and that is produced or distributed for sale to a consumer or for the personal use, consumption, or enjoyment of a consumer for use in or around a permanent or temporary household or residence or a school, for use in recreation, or for other purposes or in other locations.

The bill would exclude from the definition of “electronic equipment” certain electronic devices, including fixed-installation devices that are electrical or mechanical, or electrical and mechanical, as specified, an electronic device that is a video display device, or an electronic or electrical lighting device.

The bill would require a producer, as defined, to prepare and, at the request of the department, submit to the department, within 28 days of the date of the request, technical documentation or other information showing that electronic equipment sold or offered for sale by that producer is not prohibited from sale by the RoHS Directive, along with other specified information, or, under specified conditions, submit available information relating to the hazardous substance content and hazardous characteristics of the equipment. The department would be prohibited from imposing any requirements or conditions that are in addition to, or more stringent than, the requirements and conditions expressly authorized by the provision imposing this requirement.

The bill would require the department to treat as confidential any information that is a trade secret, as defined, that is provided to the department pursuant to the bill’s requirements, and that is identified as a trade secret at the time of submission, in the same manner as the procedures adopted by the department with regard to hazardous waste handling and disposal. The department would be required to make

available, pursuant to the California Public Records Act, any information that is not a trade secret or that is not identified as a trade secret.

Because a violation of the bill’s requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25214.10.1 of the Health and Safety Code
2 is amended to read:

3 25214.10.1. (a) For purposes of this section, the following
4 definitions shall apply:

5 (1) “Electronic device” means a video display device, as defined
6 in subdivision (u) of Section 42463 of the Public Resources Code,
7 with a screen size of greater than four inches.

8 (2) “Covered electronic device,” “manufacturer,” and “retailer”
9 have the same meaning as those terms are defined in Section 42463
10 of the Public Resources Code.

11 (3) “Trade secret” has the same meaning as defined in Section
12 25173.

13 (b) The department shall adopt regulations that identify
14 electronic devices that the department determines are presumed
15 to be, when discarded, a hazardous waste pursuant to this chapter.

16 (c) (1) Except as provided in subdivision (e), a manufacturer
17 of an electronic device that is identified in the regulations adopted
18 by the department shall send a notice in accordance with the
19 schedule specified in subparagraph (A) or (B), as applicable, of
20 paragraph (3), to any retailer that sells that electronic device
21 manufactured by the manufacturer. The notice shall identify the
22 electronic device, and shall inform the retailer that the electronic
23 device is a covered electronic device and is subject to a fee in
24 accordance with subdivision (d).

1 (2) A manufacturer subject to this subdivision shall also send
2 a copy of the notice to the State Board of Equalization.

3 (3) The notice required by this subdivision shall be sent in
4 accordance with the following schedule:

5 (A) On or before October 1, 2004, the manufacturer shall send
6 a notice covering any electronic device manufactured by that
7 manufacturer that is identified in the regulations adopted by the
8 department on or before July 1, 2004, that identify the electronic
9 devices that the department determines are presumed to be, when
10 discarded, a hazardous waste pursuant to this chapter.

11 (B) On or before April 1, 2005, and on or before every April 1
12 of each year thereafter, the manufacturer shall send a notice
13 covering any electronic device manufactured by that manufacturer
14 identified in the regulations adopted by the department pursuant
15 to subdivision (b) on or before December 31 of the prior year.

16 (4) If a retailer sells a refurbished covered electronic device,
17 the manufacturer is required to comply with the notice requirement
18 of this subdivision only if the manufacturer directly supplies the
19 refurbished covered electronic device to the retailer.

20 (d) (1) Except as provided in subdivision (e), a covered
21 electronic device that is identified in the regulations adopted, on
22 or before July 1, 2004, by the department, that identify electronic
23 devices that the department determines are presumed to be, when
24 discarded, a hazardous waste pursuant to this chapter shall, on and
25 after January 1, 2005, be subject to Chapter 8.5 (commencing with
26 Section 42460) of Part 3 of Division 30 of the Public Resources
27 Code, including the fee imposed pursuant to Section 42464 of the
28 Public Resources Code.

29 (2) Except as provided in subdivision (e), a covered electronic
30 device identified in the regulations adopted by the department,
31 pursuant to subdivision (b), shall, on and after July 1 of the year
32 subsequent to the year in which the covered electronic device is
33 first identified in the regulations, be subject to Chapter 8.5
34 (commencing with Section 42460) of Part 3 of Division 30 of the
35 Public Resources Code, including the fee imposed pursuant to
36 Section 42464 of the Public Resources Code.

37 (e) (1) If the manufacturer of an electronic device that is
38 identified in the regulations adopted by the department pursuant
39 to subdivision (b) obtains the concurrence of the department that
40 an electronic device, when discarded, would not be a hazardous

1 waste, in accordance with procedures set forth in Section
2 66260.200 of Title 22 of the California Code of Regulations, the
3 electronic device shall cease to be a covered electronic device and
4 shall cease to be subject to subdivisions (c) and (d) on the first day
5 of the quarter that begins not less than 30 days after the date that
6 the department provides the manufacturer with a written
7 nonhazardous concurrence for the electronic device pursuant to
8 this subdivision. A manufacturer shall notify each retailer, to which
9 that manufacturer has sold a covered electronic device, that the
10 device has been determined pursuant to this subdivision to be
11 nonhazardous and is no longer subject to a covered electronic
12 recycling fee.

13 (2) No later than 10 days after the date that the department issues
14 a written nonhazardous concurrence to the manufacturer, the
15 department shall do both of the following:

16 (A) Post on the department's *Internet* Web site a copy of the
17 nonhazardous concurrence, including, but not limited to, an
18 identification and description of the electronic device to which the
19 concurrence applies.

20 (B) Send a copy of the nonhazardous concurrence, including,
21 but not limited to, an identification and description of the electronic
22 device to which the concurrence applies, to the California
23 Integrated Waste Management Board and the State Board of
24 Equalization.

25 (f) (1) A manufacturer shall prepare and, at the request of the
26 department, submit to the department within 28 days of the date
27 of the request, technical documentation or other information
28 showing that the electronic device sold or offered for sale by that
29 manufacturer is not prohibited from sale pursuant to ~~this section~~
30 *Section 25214.10* along with other available information relating
31 to hazardous characteristics of the device.

32 (2) The department shall treat as confidential any information
33 provided pursuant to this section that is a trade secret and that is
34 identified as a trade secret at the time of submission by a
35 manufacturer, in the same manner as the procedures adopted by
36 the department pursuant to Section 25173 with regard to hazardous
37 waste handling and disposal. Any information that is not a trade
38 secret, or that is not identified by the manufacturer as a trade secret,
39 shall be made available to the public upon request pursuant to the

1 California Public Records Act (Chapter 3.5 (commencing with
2 Section 6250) of Division 7 of Title 1 of the Government Code).

3 (g) Notwithstanding Section 42474 of the Public Resources
4 Code, a fine or penalty shall not be assessed on a retailer who
5 unknowingly sells, or offers for sale, in this state a covered
6 electronic device for which the covered electronic waste recycling
7 fee has not been collected or paid, if the failure to collect the fee
8 was due to the failure of the State Board of Equalization to inform
9 the retailer that the electronic device was subject to the fee.

10 SEC. 2. Section 25214.10.3 is added to the Health and Safety
11 Code, to read:

12 25214.10.3. (a) For the purposes of this section, the following
13 definitions shall apply:

14 (1) “Electronic equipment” means a device that meets both of
15 the following conditions:

16 (A) The device is dependent on electric currents or
17 electromagnetic fields to work properly or is a device for the
18 generation, transfer, or measurement of electric currents or fields.

19 (B) The device, or component part thereof, is produced or
20 distributed for either of the following purposes:

21 (i) For sale to a consumer for use in or around a permanent or
22 temporary household or residence or a school, for use in recreation,
23 or for other purposes or in other locations.

24 (ii) For the personal use, consumption, or enjoyment of a
25 consumer in or around a permanent or temporary household or
26 residence or a school, in recreation, or for other purposes or in
27 other locations.

28 (2) “Electronic equipment” does not include any of the
29 following:

30 (A) A fixed-installation device that is electrical or mechanical,
31 or electrical and mechanical, that is electrically wired directly to
32 a fixed electrical system, or connected to a fixed mechanical system
33 of a structure, or both a fixed electrical and fixed mechanical
34 system, and that cannot be readily disconnected without altering
35 the electrical or mechanical system connections, or both the
36 electrical and mechanical system connections. An electronic device
37 that is portable and uses an electrical plug as the means to connect
38 to an electrical source is not a fixed-installation electrical or
39 mechanical device, or both an electrical and mechanical device.

40 (B) An “electronic device” as defined in Section 25214.10.

1 (C) Electronic or electrical lighting devices.

2 (3) “Hazardous substance” means any substance for which the
3 RoHS Directive prohibits the sale, or offering for sale, of electronic
4 equipment containing that substance.

5 (4) “Producer” means a person who, irrespective of the selling
6 technique used, does any of following:

7 (A) Manufactures and sells electronic equipment under the
8 producer’s own brand.

9 (B) Resells, under the producer’s own brand, electronic
10 equipment produced by other suppliers. For the purposes of this
11 section, a person who resells electronic equipment is not the
12 producer of that electronic equipment, if the brand of the producer
13 appears on the equipment, as provided in subparagraph (A).

14 (5) “RoHS Directive” means the directive on the restriction of
15 the use of certain hazardous substances in electrical and electronic
16 equipment RoHS, and is cited as Directive 2002/95/EC, adopted
17 by the European Parliament and the Council of the European Union
18 on January 27, 2003, on the restriction of certain hazardous
19 substances in electronic equipment, as amended on or before
20 January 1, 2010 (13.2.2003 Official Journal of the European
21 Union).

22 (6) “Trade secret” has the same meaning as defined in Section
23 25173.

24 (b) (1) A producer shall prepare and, at the request of the
25 department, submit to the department within 28 days of the date
26 of the request, technical documentation or other information
27 showing that electronic equipment sold or offered for sale by that
28 producer is not prohibited from sale by the RoHS Directive along
29 with other available information relating to hazardous
30 characteristics of the equipment.

31 (2) If the electronic equipment offered for sale in this state is
32 not offered for sale in the European Union and documentation
33 showing that the equipment is not prohibited from sale by the
34 RoHS Directive is not available, the producer shall submit to the
35 department available information relating to the hazardous
36 substance content and hazardous characteristics of the equipment.

37 (c) The department shall treat as confidential any information
38 provided pursuant to this section that is a trade secret and that is
39 identified as a trade secret at the time of submission by a producer,
40 in the same manner as the procedures adopted by the department

1 pursuant to Section 25173 with regard to hazardous waste handling
2 and disposal. Any information that is not a trade secret, or that is
3 not identified by the producer as a trade secret, shall be made
4 available to the public upon request pursuant to the California
5 Public Records Act (Chapter 3.5 (commencing with Section 6250)
6 of Division 7 of Title 1 of the Government Code).

7 (d) The department shall not impose any requirements or
8 conditions that are in addition to, or more stringent than, the
9 requirements and conditions expressly authorized by this section.

10 SEC. 3. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.